

MADISON COUNTY PLANNING BOARD

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Planning Board Report

To: Madison Board of County Commissioners
From: Charity Fechter, Planning Director
Date: October 26, 2010

Subject: Streamside Protection Regulations

Background

History of Streamside Protection to Date

Madison County residents have long supported policies to protect the environment. From its creation in 1972 to the present day, the Madison County Planning Board and community residents have studied environmental issues and recommended actions to encourage environmentally sensitive development. A graphic showing the timeline is shown in Attachment A.

1973 Madison County Comprehensive Plan

The first Madison County Comprehensive Plan included recommendation C(2): "Protect land unsuitable for development by virtue of being in a flood plain, on excessive slopes, in poor soils, or otherwise unsuitable which may be hazardous to the health or welfare of the homeowner, or which may be environmentally damaging."

1979 Madison River Committee

Concern about increasing development pressure on the Madison River corridor prompted the formation of a Madison River Committee in 1979. That Committee identified the importance of "preserving scenic values and maintaining high quality recreational opportunities on the Madison River corridor for present and future generations."

1983 Madison River Corridor Study

The Madison County Planning Board commissioned the Madison River Corridor Study (MRCS). That study noted that there was concern in the early 70's that subdivision and land development along the Madison was adversely affecting important recreational values and related economic values of the resource. It further documented the public's "concern that development along the Madison River will adversely affect the important economic and recreational opportunities that so many people depend on in the Valley" and identified "immediate action is needed to protect the Madison River Corridor with special emphasis on a strip 500 feet each side of the river" from Quake Lake to Varney Bridge. The Madison River Corridor Plan contained in the MRCS included:

- Objective #5 - achieve a greenbelt or buffer strip along the upper Madison River and develop corridor plans for the Big Hole, Beaverhead and Jefferson Rivers.
- Objective #6 - consider the visual aesthetics of the Madison, Big Hole, Beaverhead, Ruby and Jefferson River corridors in evaluating proposed land uses within these corridors.

The Planning Board began working with landowners to voluntarily preserve a 500' corridor on each side of the Madison River "except in rare cases where building could not be seen from the river due to natural topography." The board recognized that some building had occurred over the past decade within the 500 foot setback along the Madison River where the board had no regulatory review authority.

1988 Madison County Comprehensive Plan Update

The Madison Valley Plan was included in the update, which also incorporated recommendations from the Madison River Corridor Plan. Following are specific objectives related to rivers and streams.

- Objective E.3. Encourage measures which will preserve air and water quality and protect watersheds from erosion and loss of ground cover.
- Objective E.5. Work toward implementation of the Madison River Corridor Plan to achieve a greenbelt or buffer strip along the upper Madison River and develop corridor plans for the Ruby, Big Hole, Beaverhead and Jefferson Rivers.
- Objective E.6. Preserve and protect the abundant fish and wildlife resources of the County.
- Objective F.6. Consider the visual aesthetics of the Madison, Big Hole, Beaverhead, Ruby, and Jefferson River Corridors in evaluating proposed land uses within these corridors.

1993 Madison County Subdivision Regulations

Recognizing that the voluntary efforts were not as successful as hoped, the Madison County Board of Commissioners adopted construction setbacks for newly subdivided property. The construction setbacks were: 500 feet for the Madison River; and 150 feet for the Big Hole and Jefferson Rivers.

1995 Madison County Subdivision Regulations

Construction setbacks of 150 feet for the Ruby, Beaverhead and South Boulder Rivers were added to the subdivision regulations.

1999 Madison County Comprehensive Plan

The 1999 plan contained more detailed statements, goals and objectives related to rivers and streams.

- Guiding Principle #2 – Protect our river corridors.
- Land Use Objective #3 – Keep development out of the floodplain and riparian areas.
- Land Use Objective #6 – Locate and design development in ways that preserve open space.
- Economy Objective #2 – Utilize and protect the resources which support these major economic sectors (agriculture, forestry, mining, recreation and tourism, retirement-related services, entrepreneurial enterprises, and construction activity.)
- Economy Objective #4 – Acknowledge the economic value of the County's fisheries, wildlife, and wildlife habitat.
- Environment Goal – Protect the quality of our air, groundwater, surface waters, soils, vegetation, fish and wildlife habitat, scenic views, cultural and historic resources.

In addition, the plan reiterated the goal from 1988 Madison Comprehensive Plan Update, to "Preserve and protect the entire Madison River corridor, from Quake Lake north to the County line, from encroachment by development. Specifically, the following values should be protected: scenic, fish and wildlife, recreation, agricultural, historic and archeologic, and floodplain sites."

2000 Madison County Subdivision Regulations

Construction setbacks for newly subdivided property of 100 feet from other waterways were added when the regulations were revised. The construction setback purpose was defined as:

- Protect the water quality, floodplain, and riparian resource of the rivers and other water bodies in Madison County.
- Protect the visual resource enjoyed from these waterways; and
- Provide for the health and safety of the residents of Madison County.

2004 Ordinance 1-2004 Big Hole River Conservation Development Standards and Permitting Process

A multi-year, collaborative process with the four counties adjoining the Big Hole River resulted in adoption of an ordinance addressing new structures along the Big Hole River. The stated purposes of the ordinance are:

1. To provide for the preservation of orderly development along the Big Hole River by establishing standards and a permitting process for new construction and the transaction of such business;
2. To protect water quality and quantity, floodplain and riparian resources;
3. To preserve an undisturbed river corridor and maintain natural resource functions and conditions; and
4. To protect the health and safety of resident and visitors of the Big Hole.

2006 Madison County Growth Policy

The 1999 Comprehensive Plan was revised to meet the new state Growth Policy standards. The resulting growth policy retained the goals and objectives from the 1999 Plan.

2006 Madison County Subdivision Regulations

The subdivision regulations updated in 2006 retained the river and stream construction setbacks for newly subdivided property.

2007 Madison Valley Growth Management Action Plan

A two-year long, collaborative process to explore options and identify actions to positively manage growth in the Madison Valley resulted in adoption of the Madison Valley Growth Management Action Plan as part of the Growth Policy. A Specific Action item included in the plan was:

- “use of building setbacks to protect rivers and streams” including “land not subject to subdivision review.”

2007 Madison Valley Growth Solutions Community Forums/Boxholder Mailings

The citizen-based Madison Valley Growth Solutions group continued their sponsorship of community forums. A Water Summit (Public Forum #13) addressing water rights, water allocations, wetlands, surface and groundwater resources was held on July 7, 2007. A summary of the July 7 forum was sent to all boxholders prior to a follow-up forum (#14) on Water and Growth held on September 27, 2007. The priority recommendation from the participants was to recommend that the Madison County setback requirements be expanded to include all new development in the Madison Valley.

A request was made to the Madison County Commissioners to adopt an ordinance expanding the setback requirements to apply to all development, not just subdivisions. In October 2007, planning staff was asked to develop such an ordinance, with the area defined as the Madison River and its tributaries and waterways on the east side of the Tobacco Root Mountains.

2008 Madison Valley Growth Solutions Community Forums

Three public forums sponsored by Madison Valley Growth Solutions were held in 2008.

- Public Forum #15, Streamside Protection for All, was held on January 30, 2008. Ways to accomplish streamside protection were discussed. A draft ordinance prepared by Planning staff and patterned on the Big Hole Conservation Development Ordinance was presented for discussion.
- Public Forum #16, Science of Setbacks, was held on April 23, 2008.
- Public Forum #17, held on September 17, included presentation by the Governor's Riparian Task Force, Conservation District, Forest Service, and Gallatin County Water District.

Streamside Protection Steering Committee (SPSC) – 2008-2009

A steering committee was formed to develop a recommended draft ordinance addressing streamside protection in 2008. The citizen committee included individuals with a variety of backgrounds and interests from throughout the planning area. The members and alternates were: Bill Mercer, Kelly Galloup, Richard Lessner, Amy Robinson, Donna Jones, Gayle Schabarker, Pat Clancy, Chris Murphy, Jeff Laszlo, John East and John Thiede.

From March 2008 through September 2009, the SPSC met regularly in publicly noticed and advertised meetings. To facilitate public access to the process, Madison County continuously maintained information on the SPSC, including meeting summaries, interim products, final proposal and transmittal letter, under "Current Proposals" on the County's website. A separate e-mail address for comments specific to the topic was established. Meeting summaries and correspondence sent to the SPSC were shared with the Planning Board and the Commissioners throughout the process.

The SPSC completed their recommended draft ordinance in September, 2009 and presented their recommendations to the Planning Board in October, 2009. The transmittal letter (Attachment B) accompanying the draft ordinance stresses the following points:

- "This committee and an intensely interested general public struggled to balance protection of the river resources and protection of private property interests."
- "Everyone on this committee thinks that water quality, riparian habitat protection and private property rights are important."
- "We were not able to agree to an exact minimum setback number and have outlined the range in our discussion of Section 5, in the addendum."
- The setback ought to have three key features:
 - "A natural vegetative buffer between the rivers and streams and structures;
 - A minimum setback that will minimize resource damage on the majority of properties; and
 - A secondary setback that will protect especially sensitive sites."
- The key points of consensus were:
 - "Water quality and riparian protection are our primary resource protection goals. Floodplains appear to be adequately covered in separate floodplain regulations. Viewshed issues, though important to some, do not have a consistent enough definition or sufficient support to become part of an ordinance."
 - "Straightforward and transparent processes for permitting, review, variances and appeals are very important....The language in the draft ordinance reflects our best attempts to ensure that the process is clear and streamlined for the landowner, but is also thorough enough to ensure that the Planning Department can adequately assess the request and resource protection will take place."

- The proposed planning area is appropriate.
- “In order to meet our resource protection goals, the buffer area within the setbacks needs to be left in its natural state.”
- “Education will be an important and ongoing tool to ensure that people understand the importance of the natural buffer area and how to properly care for and maintain their property.”

Included with the SPSC transmittal letter was an addendum of brief notes on each of the sections contained within the proposed ordinance. The entire addendum is included in Attachment B. Of particular note are the following:

- Section 2, Authority. The SPSC left this section up to the legal authorities.
- Section 5, General Standards. Full consensus on the minimum setback was not reached because there was not agreement on the balance between private property rights and resources protection. The ranges reached were:
 - Madison: 50'-100'; average 75'; median 75'
 - Jefferson: 50-100'; average 84.4' median 87.5' (one member abstained)
 - Tributaries: 25'-100'; average 58.3'; median 50'
- Section 8, Variances and Appeals. The recommended composition of the proposed 5-member review committee were: either 2 Planning Board members and 3 citizens at large, all from within the planning area affected by the ordinance; or a 5-person citizen at large panel within the planning area affected by this ordinance.
- Section 9, Enforcement. The SPSC developed a workable system for identifying and following up on violations.
- Section 10, Penalties. “The most important penalty is to ensure that violators are forced to fix the problems they make.”

The Streamside Protection Steering Committee proposal was used as a basis for the Planning Board's deliberations.

Planning Board

The SPSC presented their recommendation to the Planning Board in October 2009. The SPSC proposal has been used as the basis for the Planning Board's deliberations since that time. The Planning Board also considered the Shared Community Values (Attachment C) during their deliberations.

On June 7, 2010, the Planning Board and Commissioners held a community forum to discuss the proposals. The Planning Board had suggested specific changes to the SPSC proposal for consideration, including the recommendation that Part 2 Zoning Authority be used. Letters were sent to property owners likely to be affected by the proposed ordinance, and postcard notices were sent to all boxholders in Madison County. In addition to the comments made at the meeting, a survey with specific questions was included in the handout materials and online.

The basic conclusions from the forum and survey were used as input to further Planning Board deliberations. The conclusions were:

- The survey results are similar to the comments made during the forum.
- “Protecting private property rights” is a common theme. At the same time, most of the individuals concerned about property rights also expressed support for the Streamside Protection Steering Committee's recommendations.

- The distance on the Madison River was the most controversial. There was very limited support for the 500' distance, with most survey respondents favoring 150'. A significant number favored a distance greater than 150' but less than 500'.
- There were very few comments related to protecting the tributaries.
- "Shall" versus "may" in relation to the exceptions needs to be reviewed. The introductory paragraph indicates that an administrative variance will be granted for the listed conditions, but the specific language describing the exceptions implies that the administrative variances are discretionary.
- The scientific basis for determining the distances recommended should be explicit, not general.
- The survey responses indicate some support for a fixed distance.
- Consideration should be given to addressing the Jefferson River separately. Its characteristics are different, and the proposal addresses only a portion of the river.

Proposal

The proposal is described by section. The Planning Board's proposal keeps the same format and general concepts the Steering Committee's recommendation. Two changes to the SPSC proposal found throughout the document are:

1. References to "Ordinance" were changed to "Resolution" as is specified in the Montana Code.
2. The Jefferson River drainage is excluded.

Title

The Title refers to the Madison River and West Fork of the Madison River watersheds. After the South Boulder River drainage was excluded, only a minor portion of the Jefferson River drainage was left. Rather than address the Jefferson River and its drainage in a piecemeal fashion, the decision was made to exclude the Jefferson River at this time. The preference is to address the Jefferson River drainage as a whole in a multi-county effort, similar to that done for the Big Hole River.

The West Fork of the Madison River watershed was called out initially because it was shown separately on the map. It is actually a subset of the Madison River watershed, so its inclusion is redundant.

The title refers to Madison County waterways. The proposed standards do not apply to the Town of Ennis, as Madison County does not have the authority to make regulations for the Town.

Recommendation: Remove references to "West Fork of the Madison River" watershed in the title and throughout the document.

Section 1. Purpose

The starting point for discussion on the purpose was Section IV.B.1.a of the Madison County Subdivision Regulations (2006), which states:

Purpose: The purpose of these construction setbacks is to:

- (1) Protect the water quality , floodplain, and riparian resource of the rivers and other water bodies in Madison County;
- (2) Protect the visual resource enjoyed from these waterways; and
- (3) Provide for the health and safety of the residents of Madison County.

As noted in their transmittal letter to the Planning Board, the SPSC members did not agree that protecting the visual resources should be part of the streamside protection. After extensive discussion, the SPSC stated purpose was to address riparian resources and water quality. The SPSC felt the existing floodplain regulations were adequate and so did not need to be addressed.

The Planning Board also discussed whether the streamside protection standards should apply to visual resource. While this is an important resource worthy of protection, the Planning Board agreed to remove it from consideration in the standards.

The Planning Board disagreed that floodplain regulations are adequate to provide the protection needed. The limitations of the floodplain regulations for streamside protection were illustrated through an example on the Jefferson River. A house constructed adjacent to the Jefferson River technically meets the floodplain regulations. Photos taken during a June (2010) high water event show it surrounded by water, with the adjacent pasture flooded and the horses forced next to a small area near the fence.

The Planning Board added fish and wildlife habitat protection to the purpose statement. Protecting the habitat for fish and wildlife is directly related to the riparian and water quality resources. Fish and wildlife habitat requirements are also directly related to the level of riparian resource protection needed.

“Provide for the health and safety of the residents of Madison County” was not included in the stated purpose. Given that both the SPSC and Planning Board frequently referred to human health and safety, this should be added to the purpose statement.

Recommendation: Add to the purpose statement “and to provide for the health and safety of the residents of Madison County.”

Section 2. Authority

The SPSC discussed whether to use the County’s General Authority or Zoning Authority to adopt rules related to streamside protection. Their ultimate recommendation was to leave the decision to the Board of Commissioners.

The advice most often given is to adopt these standards using the zoning authority. Further recommendations are to use the authority given under Type 2 – County Zoning. The Board of Adjustment specified under Type 2 closely matches the SPSC proposal for a Review Board. The SPSC was also concerned about enforcement. The Enforcement section under Type 2 specifically calls for an attempt to obtain voluntary compliance and has specific penalties that may be imposed, and allows the board of county commissioners to appoint enforcing officers. The enforcement section from the Montana Code for both Type 1 and Type 2 zoning are shown in the following table.

Type 1 (Montana Code Annotated)	Type 2 (Montana Code Annotated)
<p>76-2-113. Enforcement of zoning provisions. If any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or if any building, structure, or land is used in violation of this part or of any resolution adopted under this part, the county, in addition to other remedies, may take any appropriate action or begin proceedings to:</p> <ul style="list-style-type: none"> (1) prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use; (2) restrain, correct, or abate a violation; (3) prevent the occupancy of a building, structure, or land; or (4) prevent any illegal act, conduct, business, or use in or near the premises. 	<p>76-2-210. Enforcement of zoning provisions. (1) If any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or any building, structure, or land is used in violation of this part or of any resolution adopted under this part, the county, in addition to other remedies, may institute any appropriate action or proceedings to:</p> <ul style="list-style-type: none"> (a) prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use; (b) restrain, correct, or abate a violation; (c) prevent the occupancy of the building, structure, or land; or (d) prevent any illegal act, conduct, business, or use in or near the premises. <p>(2) For the purposes of enforcing subsections (1)(a) through (1)(c), the county shall attempt to obtain voluntary compliance at least 30 days before filing a complaint for a violation of this part that is subject to the penalties under 76-2-211.</p> <p>(3) The board of county commissioners may appoint enforcing officers to supervise and enforce the provisions of the zoning resolutions.</p>

Both the Madison Valley Growth Management Action Plan (2007) and the Madison County Growth Policy (2006) recommend “the use of building setbacks to protect rivers and streams” including “land not subject to subdivision review.” Recommended Action #2 from the Madison Valley Growth Management Action Plan states: “Using the Vision, Overarching Principles and Guiding Principles, propose zoning (county-initiated or citizen-initiated) to: promote a sense of community and efficient distribution of growth; promote a diverse community; establish development standards that are fair and equitable; reflect shared community values; protect property rights; protect public health, safety and welfare.”

Using the Type 2 County Zoning authority is consistent with the adopted growth policy.

Recommendation: Approve as written.

Section 3. Definitions

The definitions section proposed by the SPSC was modified to delete terms that are not used, add terms that needed further definition or that were added to the document, or modified to more clearly convey the term’s intent. Definitions found in state statute were used where possible.

Recommendation: Add a definition for “Transition Area” as discussed under Section 5.

Section 4. Jurisdictional Area and Compliance

This section describes the area where the standards and permitting process apply, measured as a distance from all waterways. The primary difference between the SPSC proposal and the Planning Board's proposal is that the jurisdiction area for the Madison River was changed from 150 feet to 500 feet. This distance is consistent with the standards in the subdivision regulations and the resources to be protected. The jurisdiction area for the other waterways is 150 feet, which is the same as proposed by the SPSC.

Recommendation: Approve as written.

Section 5. General Standards

The general standards section describes the intent behind the streamside buffer area, primary and secondary, and the building setback. It also notes the compliance with floodplain, sanitation, water quality standards and other applicable ordinances is required.

Both the SPSC and Planning Board proposals included a fixed streamside buffer area with provisions for expanding it to include an additional area where site specific conditions warrant the extra protection. In both cases, the streamside buffer area is considered an area where no building would occur. As the SPSC noted in their transmittal letter, the distances they recommended were averages of the distances suggested by all of the members.

Most of the Planning Board felt the distances proposed by the SPSC were not adequate for their stated purpose of riparian and water quality protection, and were not adequate for fish and wildlife habitat protection. The 75 distance proposed for the Madison River and the 50 foot distance proposed for the other waterways are not adequate for water quality protection as they are not consistent with minimum DEQ requirements for septic tank placement. Madison County Sanitarian Ralph Hamler has stated that 100 feet is the *minimum* distance required to meet the standards. Most of the respondents to the survey in June, 2010, on the appropriate distance for the Madison River suggested 150 feet, though a significant number thought it should be larger.

With 100 feet established as the minimum distance for water quality standards, the Planning board then addressed riparian and fish and wildlife protection distances. One of the primary sources consulted by the Planning Board was the three reports from *The Need for Stream Vegetative Buffers: What Does the Science Say?* These reports summarize the scientific recommendations for stream vegetative buffer areas by various purposes. The minimum distances settled on by the Planning Board were 150 feet for the Madison River and 100 feet for the other waterways, provided there was a transition area between the streamside buffer and a structure.

Just as it arose during SPSC discussion, so did the Planning Board question the advisability of allowing structures adjacent to the streamside buffer area. A building allowed immediately adjacent to the streamside buffer area would degrade its utility as uses encroached on the buffer area. The first encroachment would be the desire to remove the vegetation for a defensible space, as recommended for fire safety. Other potential encroachments that would compromise the streamside buffer area include lawns, gardens, dog kennels, and other non-structural resources related to the residential use. The Planning Board used information presented by wildlife experts during subdivision review and other presentations and again referred to the three reports *The Need for Stream Vegetative Buffers: What Does the Science*

Say? when considering the distance between the streamside buffer and structures. The Planning Board then settled on building setback distance of 300 feet for the Madison River and 125 feet for the other waterways.

No name was given to the area between the streamside buffer and the building setback which is designed to accommodate uses that would otherwise encroach into the streamside buffer area. The term “transition area” is suggested for this area, to be defined as “The area between the streamside buffer area and the building setback. Modifying Figure 1 to better display the fixed streamside buffer, secondary streamside buffer, transition area and building setback is proposed.

There are two Section 5.B.s. The second one should be Section 5.D, and current Sections 5.D. and 5.E should be renumbered to Sections 5.E and 5.F.

Recommendation:

- “Section B. Building Setback”
 - Renumber and rename “Section D. Building Setback and Transition Area”
 - Modify the paragraph to read: “The building setback is the minimum distance from the stream to a building. The area between the streamside buffer area and the building setback is known as the transition area. Non-building uses in the transition area are permitted. The building setback distances are:...”
- Renumber Sections D and E to E and F.
- Include the definition of “Transition Area, the area between the streamside buffer area and the building setback where non-building uses are permitted” to the Section 3. Definitions.
- Modify Figure 1 – General Standards to show the fixed streamside buffer area, secondary streamside buffer area and transition area.

Section 6. Permitting Process

The Permitting Process requires a streamside protection development permit before building construction or alteration activity within the jurisdiction area. The process proposed by the SPSC is essentially the same as that proposed by the Planning Board. Applications would be made to the Planning Director, who would have 30 days from receipt of a complete application to approve, approve with conditions, or deny the permit. Permits are valid for three years from the date of approval, with a one-year permit extension allowed.

Recommendation: Approve as written.

Section 7. Exceptions and Special Conditions and Rights of Property Owners

Section 7.A. covers the specific exceptions to the streamside buffer areas. The exceptions are the same as those recommended by the SPSC, with the addition of “stream restoration projects.” The language in this section was modified to explicitly allow the intended exceptions. These are not variances, but exceptions to the regulations.

The Planning Board also kept the Section 7.B. Special Conditions recommended by the SPSC. Section 7.B. allows administrative (staff-issued) variances under certain conditions. The variances apply to lots where: there is only one practical building site; where the streamside buffer area is more than 50% of the lot depth; the streamside buffer area is greater than 50% of

the lot depth from a major highway; and the elevation changes between the water and the land to be developed are substantial resulting in separate upland habitat at least 25 feet higher with slopes greater than 25%.

Through discussions with members of the public, it is apparent that Section 7 needs additional clarifying language. As proposed, the exceptions and special conditions would apply only to the streamside buffer area. This was appropriate when the building setback and streamside buffer area distances were the same, but creates confusion with the transition area and building setback. There is also some confusion about whether a variance would be granted for a legally-created pre-existing lot.

Based on the purposes and intents of the various distances, the area where disturbance should be minimized is the streamside buffer area (fixed and secondary). The transition area between the building setback and the streamside buffer could allow some adjustment without encroaching into the streamside buffer area. Following is a suggested explanatory paragraph to be inserted at the beginning of Section 7. Exceptions and Special Conditions and Rights of Property Owners:

“Exceptions and special conditions have been identified to ensure that legally created lots would remain buildable under these regulations. Where adjustments in distances are needed to ensure there is a buildable area that minimizes overall disturbance, the adjustments are to be considered in this order: building setback, transition area, secondary streamside buffer area, then fixed streamside buffer area.”

The following language changes would ensure that exceptions and special conditions would apply to the building setback as well as to the streamside buffer area.

- Section 7.A. Streamside buffer areas, transition areas and building setbacks pertain...
- Section 7.B. “...Where the right of property owner to build a structure on a pre-existing lot necessitates a decrease in the streamside buffer area, transition area or building setback, ...”
- Section 7.B.1. Decreases in Streamside Buffer Areas and/or Setbacks
- Section 7.B.1.a., 1.b., 1.c., 1.d. – replace “streamside buffer area” to “streamside buffer area, and/or building setback” throughout.

Recommendation: Amend Section 7 as follows

- Add: “Exceptions and special conditions have been identified to ensure that legally created lots would remain buildable under these regulations. Where adjustments in distances are needed to ensure there is a buildable area that minimizes overall disturbance, the adjustments are to be considered in this order: building setback, transition area, secondary streamside buffer area, then fixed streamside buffer area.”
- Section 7.A. Exceptions: “Streamside buffer areas, transition areas and building setbacks pertain to all building construction...”
- Section 7.B.: “...Where the right of property owner to build a structure on a pre-existing lot necessitates a decrease in the streamside buffer area, transition area or building setback, ...”
- Section 7.B.1. Decreases in Streamside Buffer Areas and/or Setbacks
- Section 7.B.1.a., 1.b., 1.c., 1.d. – replace “streamside buffer area” to “streamside buffer area, and/or building setback” throughout.

Section 8. Variances and Appeals

MCA 76-2 has specific procedures for variances and appeals. This section was rewritten to be consistent with the statute. The SPSC proposal was a hybrid that included a Review Board that recommended actions to the Commissioners. Under MCA 76-2, the Board of Adjustment is the decision making body. Appeals to administrative decisions by the Planning Director and procedural variances would go to the Board of Adjustment.

Recommendations: Approve as written.

Section 9. Enforcement

The enforcement section was adjusted to ensure compliance with MCA 76-2-210 by adding Section A and B.

Recommendations: Approve as written.

Section 10. Penalties

The penalties section removed references to MCA 45-2-311 and 312 as the penalties are specified in MCA 76-2. The requirement that the court order the site be brought into compliance was retained.

Recommendations: Approve as written.

Section 11. Severability

The severability language states that if a court finds a portion of these regulations unenforceable, the remainder continue in effect. It also states that more stringent federal or state government standards would apply.

Public Comments Through September 27, 2010

Voluminous public comments have been made at public forums, the Streamside Protection Steering Committee meetings, and the Planning Board meetings. The comments generally fall into the following categories.

Property Rights

Protecting private property rights was a common theme throughout the process. At the same time, those who support private property rights typically support some level of streamside protection. The most common reasons for not supporting were: any restriction on development next to the waterways constitutes a taking of private property for public purposes; and development restrictions create a loss of property value.

The Montana Constitution, Article II, Section 3. Inalienable Rights states:

“All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities.”

The Planning Board has tried to balance the inalienable rights with the corresponding responsibilities.

Takings

The first question related to property rights is whether zoning is a taking. Both the Montana Supreme Court and the US Supreme Court have found zoning an appropriate use of police powers. The proposed regulations do not allow physical occupation by the public of private property, beyond whatever rights the public already possesses. The exceptions and special conditions section is designed to ensure that no currently legal, buildable lot would lose that right if the regulations are adopted.

Loss of property value

There have been other statements that the land use regulation would diminish the value of the property. Streamside or waterfront property would not change, but there would be restrictions on where structures could be placed. This is similar to changing the requirement for septic systems; at one time, dumping raw sewage into the waterways was acceptable. A summary from the Flathead area and a comprehensive study done by Oregon State University indicate that land use regulations tend to have a positive impact on land values.

Scientific Standards

Many of the individuals opposed to a streamside buffer larger than proposed by the SPSC have stated their disagreement with the three reports included in *The Need for Stream Vegetative Buffers: What Does the Science Say?*. The reports were done for the Montana Department of Environmental Quality, who uses the reports for their purposes and supports their use by others. The Planning Board did not use any one source in developing their recommended distances. The recommended ranges from the studies summarized in the *The Need for Stream Vegetative Buffers: What Does the Science Say?* reports were considered against the floodplain regulations, sanitation and water quality regulations, and fish and wildlife biologist information.

Public Comment

Some individuals have been concerned that they are out of the area during times when the streamside protection issue has been discussed. Madison County operates year-round, and every effort is made to allow opportunities for public review and comment throughout this multi-year process.

The SPSC meetings were publicly advertised and held at all seasons the nearly two years they took to address the issue. This was followed by the Planning Board review, again held in public during regularly scheduled meetings over one year, and a special community forum held at the beginning of June, 2010. Individuals who have not been able to attend the meetings have throughout been encouraged to send written comments. Any written comments received (e-mail, fax, or letter) have been copied, and forwarded to the Commissioners, Planning Board and/or SPSC as appropriate. As documents have become available they have been posted electronically on the County's website, making the information accessible to those who would otherwise have difficulty obtaining the physical documents.

Both the SPSC and the Planning Board have taken public comments seriously. The Planning Board used comments made during the June 7, 2010, meeting to guide them in their deliberations.

Agricultural Uses

Some individuals have stated they support streamside protection, provided it also applies to agricultural uses. MCA 76- 2 Part 9 limits the restrictions that may be place on agricultural activities, especially 76-2-901, Agricultural activities – legislative finding and purpose:

“ (1) The legislature finds that agricultural lands and the ability and right of farmers and ranchers to produce a safe, abundant, and secure food and fiber supply have been the basis of economic growth and development of all sectors of Montana's economy. In order to sustain Montana's valuable farm economy and land bases associated with it, farmers and ranchers must be encouraged and have the right to stay in farming.

(2) It is therefore the intent of the legislature to protect agricultural activities from governmental zoning and nuisance ordinances.”

and 76-2-903, Local ordinances:

“A city, county, taxing district, or other political subdivision of this state may not adopt an ordinance or resolution that prohibits any existing agricultural activities or forces the termination of any existing agricultural activities outside the boundaries of an incorporated city or town. Zoning and nuisance ordinances may not prohibit agricultural activities that were established outside the corporate limits of a municipality and then incorporated into that municipality by annexation.”

The proposed regulations limit building and fence construction. Already established uses, such as grazing, cannot be prohibited.

Public Hearing, October 25, 2010

The October 25, 2010 public hearing was advertised in The Madisonian on October 7 and 14, 2010 and posted on the Madison County website. Notices were posted at the Courthouse, Broadway Annex and Post Office bulletin board in Virginia City, and post offices around the county. Copies of the Planning Board's proposal were made available at the libraries and the County Planning Office. The proposal was also posted under “Current Proposals” on Madison County's website.

Written comments received through 4:15 p.m. on October 25, 2010

Commenter	Date - Comment Summary
Pat Bradley	10/18/10 (e-mail) – Appreciate 3-year effort to follow the guiding principles of the Madison Valley Action Plan resulting in a recommendation on a setback plan for protection of the Madison River. Proud of Planning Board's long effort, good will and perspective. Board has: recognized link between property rights and the common good; given adequate time for all subcommittee deliberations; provided opportunity for public input far beyond normal requirements; listened to abundant opinions, new and tautological; investigated complaints and allegations; put science before ideology; recommended a resolution fair to all citizens; understood government is at its essence when it helps people to not harm each other; answered the question “what will be the loss in property values by lack of river protection if we do not put in safeguards to preserve our

	rivers?
Craig Mathews	10/21/10 (e-mail with attached letter and copy of June 2010 letter) – Proposal goes too far to accommodate private property rights vs. river protection but can live with it. If science can assure proposal will keep river healthy and citizens and commission can keep Madison Valley from looking like other Montana river valleys then move forward. He continues to work on conservation easements to keep Madison valley intact.
Pat Clancey	10/21/10 (e-mail with attached letter) – Fully supports setback and buffer distances. Feels necessary science applied. Has advocated a minimum of 100' based on common sense and scientific papers and studies made available to steering committee. Economic science supports action that preserve the openness and natural resources associated with river and stream corridors. A healthy and wisely managed landscape is essential for creating and maintaining stable and reliable long-term economic conditions.
Christopher Kierst	10/24/10 (e-mail with attached letter) – Geologist in Utah and Madison County landowner. Residential usage along Madison corridor is seasonal, owned by absentee landlords, lightly used. Opposed to setbacks. Objects to one-size-fits-all; need to evaluate on a case-by-case basis. His subdivision already has a greenbelt. Undermines property values. Not scientifically justified. Riparian corridor <u>is</u> the wildlife corridor. Literature for riparian corridors is for lush Pacific Northwest, not arid Rockies. Most of the land within the 500' setback acceptable for septic. 500' too much. Most likely have regulatory tools to prevent residential development in wetlands. Low density residential not a problem. County in Utah where he lives can protect wetlands without 500' setbacks (<i>note – Summit County</i>). Attack on private property rights to do the bidding of the “socialist, elitist UN globalists who are ultimately behind this usurpation” who are behind the “alarmist global warming hoax.”
David Klatt	10/24/10 (e-mail with 5/28/10 letter) – (e-mail) No significant improvement over June proposal. Meeting being held in Virginia City in off season. Doesn't include all areas. (letter) Property owner. Discriminates against one segment of population for benefit of another; if important enough, should be done county-wide. Opposed to county-initiated zoning.
Ticker Jones	10/25/10 (e-mail with letter) – Matter is complex and needs to be addressed more comprehensively. Believes there is an agenda behind this movement. Setback issue is about viewshed. Conversations should included river users, with their needs and responsibilities. Habitat and ecology near the surface waters need to be protected; major degradation from livestock. Should be addressed county-wide. County Commission initiated zoning has not place.
Cheryl Kierst	10/25/10 (e-mail) – Use bonds to buy the property instead of using setbacks.
Donna Jones	10/25/10 (e-mail with attachment) – Resents Planning Board's disregard concerning consensus of streamside set back footage. Listen to numerous stakeholders. Already spent \$35,000 in taxpayer money on issue. Listen to all the science. Madison doesn't flood. Home septic systems have proven no damage. There is pollution when heavy animal use is found near the water ways. How long can fishery survive with number of boats? No one would build in gorge area. Lot of land is under conservation easement. Look at all correspondence and science.

Excerpt from Draft Minutes of October 25, 2010

Streamside Protection Standards and Permitting Process – Proposed regulations would apply to all property within 500 feet of the Madison River and 150 feet of all other waterways within the Madison River watershed.

Charity Fechter reviewed the Streamside Staff Report as mailed in the packet and on file. Charity also reviewed the ordinance and proposed some additional language changes in section 5 to include “transition area”.

Public Comment:

Greg Morgan:

- There are no water quality issues and no evidence that there are water quality issues.
- This will alter the current rights to use property.
- Many people disapprove of setbacks in principle.
- Landowners do not support or begrudge support because there is no need for these setbacks.
- This should be site specific; science says it should be site specific.
- There has been no scientific study; only a summary that does not apply.
- Certain studies used were not conducted west of the Mississippi.
- Need something different to convince landowners.
- Forty miles of the river does not even have riparian areas.
- The committee agrees that the viewshed is not part of this but the current proposal uses subterfuge to get to the view shed issue.
- Was never notified by mail.
- Has lived in Gallatin County, is a 4th generation Montanan and has never received any notice that land would be depreciated.

Dennis Carlson: Read from a letter written by Wendy Wilson, 2010 President of the Gallatin Association of Realtors; presented to the Planning Board and on file.

- Members believe in protecting private property rights, private property values, and the free transaction of value for value between a willing seller and willing buyer.
- Past comments from the Planning Board reflect a distinct lack of regard for fellow citizens.
- Dismissing and altering the work of the Streamside Protection Steering Committee without proper foundation is not substantial justice.
- Ample and overwhelming evidence shows that the steering committee considered a wide array of criteria as they pursued their consensus process.
- Protection of the river is a public function and you are seeking to impose upon a few individuals (owners along the river) a public burden that ought to be borne by the public.
- Dr. Feigly says “there is no specific justification for a river-wide, 500’ riparian protection buffer along the Madison River for the primary purpose of protecting riparian vegetation associated with wildlife habitat.”
- The Planning Board has not quoted definitive science to support any setbacks beyond 75’.
- Planning Board members clearly referenced FWP’s draft amendments to the Model Regulations as “the science” that was the foundation. That is incompatible with the facts.
- If science supports 300’ setbacks, the Planning Board has a duty to publish that science and specifically, page by page, point out to the public, what information the decision is

based on. If the Planning Board can't do that then the decision is arbitrary and capricious.

- People object to this regulation. The public spoke up loud and clear at the June 7th forum. Objections have been specific and well-founded. You owe them the duty to be just as specific regarding the reasoning behind your decision.
- Planning Board can't predict property values; concerned that members have said values will increase. The variables to predicting values is daunting.
- A pre-existing home on a deed restricted property looks appealing. An empty lot that cannot be built on is less desirable.
- The variance process is arbitrary.
- Balance is needed and 75', along with the relevant and applicable state and federal regulations (which are considerable) is the balance required to protect the river.
- Our neighbors deserve the opportunity to enjoy the blessing and benefits of property ownership.

Steve Nelson: Owns a ranch in the North Meadow Creek area.

- Possible that people will take a hard hit on land use but so far, there is nothing to show that.
- Tourism is the number one in our valley.
- Development in some areas is offensive. If development was great, Montana would market it, but we market our natural resources.
- The hotels, campgrounds, and resorts supply the realtors with potential buyers. Realtors don't talk about the negatives: excessive wind, cold temperatures, and development; they market the natural resources.
- A setback of 300' is not that far.
- Realtors can turn this measly number around and market it gloriously; even take pride in the Valley that set it in place.
- Believes in private rights but also for public rights.

Dave Bricker:

- Thank you to the Planning Board for protecting the river.

John Bingham:

- Concurs with Dennis Carlson.
- This is a slippery slope for the county; this doesn't reflect the sentiment of the county.
- The history presented is revisionist and doesn't reflect the truth.
- In response to Mr. Nelson: This regulation will reduce the value of 100-200 land owners. No balance against the need for zoning. Lack of evidence of contamination or improper construction. Lack of any other cognitive basis for public health and welfare.
- This is an unsupported recommendation to the Commissioners.

Pete Feigly: Presented a report to the Planning Board – on file.

- Report was commissioned by the Madison-Beaverhead Board of Realtors and Montana Association of Realtors.
- Gave an overview of credentials (PhD, Ecologist, Absaroka Ecological Consulting).
- Overview of purpose of the report: review the information found in the MT FW&P online Crucial Areas Assessment and Planning System (CAPS) and to comment on the science.
- Finds CAPS to be an innovative planning and environmental review process.

- Numerous errors and potentially misleading.
- Would not currently recommend its use.
- Some wildlife has been left out while some have been included in areas not of concern.
- CAPS layers are being displayed at too fine a resolution.
- There are areas of the Madison that have no riparian areas; interesting that the Planning Board would like to set 300' setbacks even in those areas.

Bill VanCanagan: Attorney representing the Madison County Landowners Coalition. Review of the legal issues:

- Concerned that this violates procedure as outlined in the Montana Constitution; it must be reasonable and it must further the health and safety of the people.
- There is no scientific basis.
- One size fits all is not legally sustainable.
- Feigly's conclusions are clear.
- CAPS does not present reliable science.
- The Report on the planning guide for stream setbacks is so general; there is no information to support 300'
- Many legal issues:
- Violates procedural process
- Wholly unnecessary
- Violates the 5th amendment: eliminates the ability to build on your own land, deprives the owner of economic,
- One size fits all is not related to health and safety,
- The classification violates the constitution. Not reasonable.
- Town of Ennis, the Ruby, Jefferson, the Beaverhead; all should be treated alike – fundamental rights will be scrutinized by the courts.
- Serious concerns with the lack of clarity; it's ambiguous and vague.
- To adopt a one size fits all and then deal with the individual lots through a variance process.
- Referred to letter sent on July 15.

Duane Thexton:

- Recommendation to be presented to the County Commissioners on October 26, 2010 at 2pm. The same people in this room are probably interested in being at that meeting too.
- At a September 16, 2008 Streamside Protection Steering Committee meeting, Ralph Hamler said "I believe the river, with the septic regulations, is protected".
- Is all this worth the effort?
- In a Growth Solutions meeting of May 18, 2005 a comment was made that the worst outcome would be the polarization of the community. And now the lines are drawn; we're getting to that point.
- Is it worth getting a lot of negativity?
- There are four attorneys here and a court recorder. For all the legal costs, do we really have that big of a problem?
- The county has spent \$34,000 already, is it worth it to spend more?

Karen Rice: Read from a letter written by Greg and Karen Rice; presented to the Board and on file.

- The document was prepared by citizens of Madison County and then changed to an agenda that others are not aware of.

- Replaced with science from CAPS that the former planning director was able to convince you to use.
- Most citizens do not know that CAPS was funded by the Wildlife Conservation Society, the Wildlife Conservation Opportunity Fund (based out of New York) and the National Fish & Wildlife Foundation (based out of Washington D.C.). Big money from out of state corporations and private conservation groups with no tie to Montana are influencing private land use in Madison County.
- The “Madison Growth Solution” four page flyer used by the Planning board as a basis for the Growth Plan was made possible by the Sonoran Institute.
- The planning board is using 139 people out of 5,000 as support.
- The landowners have barely been heard.
- In the past, the Growth Plan was to be used as a “reference document only” for future planning but you state that the authority to create the Streamside Protection Standards comes from this document.
- Changed wording from of the Steering Committee’s recommendation from “vegetative buffer zone” to “no disturbance” and doubled the distance.
- Took the Streamside’s recommendation that came from great deal of public input and changed them to a regulation that is now intended to protect floodplain and fish and wildlife habitat; this ignores private property rights.
- Planning Board members have forgotten that they no longer work for the government and that citizens of the county do not need to be protected from themselves.
- Can’t use the guise of protecting fish and wildlife as an excuse for taking private property.
- Government agencies that regulate public land should do just that. Common sense and total impact don’t correlate with what a bureaucrat decided 2500 miles away.
- The planning director can consult with Bureau of Land Management, USDA Natural Resources and Conservation Service and the Montana Department of Natural Resources when issuing a permit. The applicant must allow these public agencies on their land. What business does Madison County have adding another layer of government control on private property?
- Madison Valley has again been partitioned off from the rest of the County.
- Neglect to include the Ruby and other water resources.
- Unbelievable that an attempt to supposedly protect the Madison River morphed to include all of the tributaries in the Madison River Watershed. Ranchers have water rights to these and own the land around them.
- You are taking private property rights.
- Section 4 includes “prohibited activities within the jurisdictional area” that includes removal of vegetation and the need to mitigate critical riparian systems and fish and wildlife habitat. Does the landowner have to hire their own resource specialist to refute a government standard that conflicts with his own?
- Water conditions, riparian habitats, and land are in excellent use and allow the rancher to utilize his land. This is the same ground that provides open space. The current subdivision setback is 500’ – do you need to proceed to attempt to regulate all property in Madison Valley?
- Time for the citizens to take back control.

Pat Bradley:

- We are here to talk about planning.

- The board's job is to plan and for the past three years you've been working on another plan; to protect the river and the land.
- Need to take some of tonight's comments with a grain of salt.
- You've followed the public process over the last 3 years.
- Not reducing the value of the land; some say you are enhancing it.
- This has nothing to do with CAPS
- This is not a one size fits all plan.
- Not violating rights
- The viewshed is not in this document.
- Being threaten with lawsuits
- You do have an agenda through your appointment to the Board.
- Not overstepping your bounds.
- Commends the Planning Board for doing a great job and hopes you keep up with it.

Lorraine Snipper:

Question to Charity – is there to be a language change in Section 7B1? *Charity – yes, there will be additional language to clarify the decrease in setback.*

Objects to the setback:

- Ignores two years of the Steering Committees work that did protect the river and was acceptable by many landowners.
- One size fits all undermines the Steering Committee.
- Will reserve more comments for the County Commissioner meeting.
- Notes that County website points to a values to be protected by a small group; majority oppose.
- Landowners are expected to sacrifice for something that is not even in danger.
- **Don Bowen:** Owner of Arrow Real Estate Agency, chair of Governmental Affairs for Beaverhead Realtors.
- Partly responsible for the document from Feigly.
- Strong believer in property rights.
- Forty years as a Real Estate agent in Montana and California.
- Definition of expert is a person with the training and knowledge in a given field. Planning Board does not have any real estate experts; personally has been an expert witness and is an expert in real estate.
- Chris Murphy had commented at a previous meeting that values would decrease and was given a study (Citizens for a Better Flathead) by a member of the Planning Board on property values when setbacks are put in place. This study uses examples from California; is based on seasonal homes and uses old data.
- Believes in some setback but not this one.
- Has heard Planning Board say that realtors can sell this and setbacks will increase the property values. Values are dependent on water. This 300' setback will have anywhere from a 40%-60% decrease in property values (anything over 150').

Bob Wagner:

- Thank you to the board for their volunteerism.
- Must remind you that you took a pledge.
- Volunteerism is thankless and challenging.
- We don't live in a democracy but there are more people against this than for it.
- Serious considerations in light of the Pledge..."Under God"

- To protect property rights and values but there is no definition for rights and values in the document.
- Pledged to the US and MT constitutions.
- Planning Board has listed the Montana Constitutions article 2, section 3: Clean and healthy environment, basic rights to acquire and protect land. There is no definition or standard of value for clean and healthy environment; prosperity must be considered as part of clean and healthy.
- Isn't enough that legislation has provided conservation easements for landowners that shifts the cost of setting aside land for conservation onto other taxpayers? And now the remaining few – seek as a board to democratically vote values away.
- Represents this district, represents the majority since the county voted me in as your legislator.
- Asks, in the name of God: God gave us our rights, property rights and values are supreme.

Bill Slaton: Owns land in the Bear Creek (Pony) area.

- Thanks the Planning Board – not an easy issue.
- Impressed with the document; it indicates compromise.
- Not sure where the balance is.
- One size fits all seems to be an issue.
- Key is the variance process – determine where there is leeway and variance.
- Suggestion regarding the appeal process: right now to appeal, a landowner goes first to a 'board of adjustment' and then to the courts. Would suggest the board of adjustment, then the County Commissioners, and then the courts.
- Thank you – other communities didn't plan until it was too late.
- Our rivers and streams are in good shape right now and now is the time to plan.

Stephanie Becker:

- Thank you to the Planning Board for the long hours
- Do share citizen values.
- Everything that the Planning Board has said is in accord with the Shared Values document.
- You are in fact a Planning Board and not meant to be consultants on property right issues per se.
- You are protecting our resources.
- There are a myriad of citizens that support this.
- What you are doing now will serve the community in the future.
- Would have liked larger setback numbers to protect the river.
- Thank you

Mike Becker:

- Agrees with Stephanie Becker
- Agrees with Mr. Morgan's point that water clarity and health is good. But when the area is 80% developed, what then? Can't put the genie back in the bottle once the land is destroyed.
- The Big Hole did this – why can't we? What dilemmas did they have? They said "we have resources to protect and a god given duty to preserve. If they can do it, we can too."

- There have been many meetings and people have a lot of other things to do besides attend every meeting.
- Hopes that the Board doesn't think that this small group represents the whole county.
- Many who are unable to be here do support this.
- Last year, in two afternoons collected over 100 signatures to support the original 500' setback – those people aren't here, aren't represented by attorneys or realtors but depend on the Planning Board to represent them.
- We have to trust that the Planning Board will do what's best for everyone.
- Count on the Planning Board to preserve the river.
- If the citizens of the Big Hole can do this, so can we, maybe even better.

Mark Milkovich: Has lived here for 52 years. Built a home in 1958. Asked about the Planning Board members; how long they've lived here and if they are landowners. John Lounsbury commented that he believed all of the Board to be landowners but did not feel it appropriate to answer beyond that.

- In 1972 when the Montana Constitution was inaugurated, it was done by young people not older than 30 and not landowners.
- The land is best taken care of by the landowners.
- Eleven people on a board is a lot.

Tricia Stabler:

- Only 80 lots in question.
- Planning Board took the Streamside Committee's document and didn't feel wildlife was included. Called many of the committee members and wildlife was included. Many of the members (Clancy, Laszlo, Jones, Lessner) have backgrounds in wildlife and certainly included wildlife.
- Reviewed all the minutes and videos and in a meeting regarding a Uline Bench variance there were three letters included: BLM was concerned with the scenic integrity, Forest Service was concerned with wildlife connectivity – but the animals don't walk the cliff and house would have pushed the wildlife out. And FW&P was concerned with a nearby eagle nest and a clump of trees that an eagle might someday decide to build a nest in.
- Has a friend in Oregon is a logger and lost his business because of the spotted owl.
- Another friend in California had the same result due to the kangaroo rat.
- Aren't people more important than rats?
- Mr. Olenicki (Lost Lakes/Moonlight subdivision) says that animals adapt and don't just go away.

John Thiede: Has property at the confluence of Warm Springs and Madison.

- This proposal will make 11.36 acres of riverfront land unusable.
- All the meetings leading up to this and the Planning Board does not like to believe there is opposition.
- Jim Hart said "this will not happen unless people want it to."
- Person from Harrison said "what will it look like" when it's developed.
- Lane Adamson said "don't want to float the river and look at houses"
- If you refer back to past meetings, Doris Fischer had an agenda.
- Not everyone wants this; the majority does not want this.
- The Steering committee didn't come to the conclusion the Planning Board wants so the Planning Board says what we want to do.
- Why wasn't this put together?

- Eileen Pearce says most people voted yes for a setback.
- By using 300' and 500' as a trigger; the variance cannot be contrary to public interest.
- If you are lucky to get a variance, it can be appealed by an aggrieved person.
- Have a problem with this and am opposed. Seems that the board doesn't hear anyone if they don't concretely state that they are opposed.

Brett Gustafson: Has lived in Madison County for 15 years.

- River is special and needs protection; it is a valuable treasure.
- Planning looks to the future. Have lived in the Rockies all his life; has traveled Colorado, Idaho, Montana, etc and years ago, people didn't protect this treasures.
- Cringes to think what Madison might look like in 30 years.
- Setbacks seem legal; not a lawyer or constitution expert.
- Setback of 75' does seem far enough; 25 big steps. Can hook with a back cast that far back.
- Supports the resolution.

Dan Happel: Served in a similar position as a Planning Commissioner in a major city.

- In the late 80's, he noticed a change in the planning process. There were a lot of NGO and unelected bodies impacting the planning process.
- He's gotten to know people through the property rights movement.
- Copies of "Understanding Sustainable Development - Agenda 21 – A Guide for Public Officials" were handed out to the Board, with the request that it be looked at before making a decision. Strongly urged Google search on UN Agenda 21 and the Delphi Technique.
- This is a private property rights issue.

Donna Jones

- On her way over she noted the chill in the air; there are varying degrees of comfortableness.
- Middle class is disappearing. Madison County, that she loves, is "putting the screws" to her.
- Came here as a shepherd; chose to be a non-executive.
- She scuba dives and loves water.
- Read from a letter she had submitted earlier; a copy was distributed and is on file.
- Already \$35,000 in tax payers' money spent – and there will be more if this moves forward.
- The people you see now are only the tip of the iceberg; when all landowners that own land on the tributaries are alerted to this ordinance.
- Listen to everyone, all the science; no damage is done when proper management practices are followed.
- Rive is like a freeway with all the boats.

Dick VanDerheyden:

Pledge of allegiance refers to "liberty and justice for all." This is not going there.

Mark Milkovich:

- Must take location into consideration.
- Should get permit so it can be reviewed.

- If attorney says one-size-fits-all, then should make arrangements to come up with something different.

Jeff Laszlo:

- Appreciates Planning Board efforts. It's difficult and complicated, with no easy or right decision.
- Everyone is here because they want to do the right thing and protect private property rights.
- Steering Committee was able to come to a consensus, which was 75'. Was surprised by comment on range of distances.
- Believes strongly in private property and also in the common good. Change (to earlier proposal) should be moderated/mitigated and lessened.
- Change from 75' to bigger number is too great a shift. Should be smaller figure. Proposal allows for increase in footage in certain circumstances.

Janet Ellis: Montana Audubon - Montana-based non-profit. She has studied stream protection standards throughout Montana.

There are 6 counties in Montana that have zoning.

- Choteau County in 1986 – created a 3-mile visual setback on the Wild and Scenic portion of the Missouri, with 400' outside Fort Benton, and 100' on other waterways
- Powell County in 2000 – established a 25-yard setback on the Blackfoot. Combined with density standard of 1 non-agriculture dwelling per 640 acres.
- One-size-fits-all argument not true. It provides a standard against which to measure a variance.
- Can't study all individual properties to come up with a standard.
- The proposed standard is defensible.

Planning Board Discussion

- Not opposed to setbacks, especially as done when subdividing. Zoning is not the way to do it.
- This is burdensome and onerous to owners affected.
- Administered by people who don't know what they are doing, the Planning Board being one of them.
- 90% will do the right thing if left on their own.
- This will become more complex, with more rules over time. It feeds on itself.
- This will not serve the County well.
- Have the option of staying with the steering committee's recommendation of 75' and 75', which fits the 150' setback on other rivers.
- 90% of the document being considered is from the steering committee.
- The issue is distance. The purpose statements are different, which is why the numbers change.
- Needs to be fair to everyone.
- Adds a new regulation to property that no longer was subject to it. Different with subdivision, as they know going into it that setbacks will be applied.
- Same situation occurred when the subdivision regulations was adopted. People planning to subdivide were subjected to the new requirement at that time, though they may have owned the property before the regulation changed.
- This is a historic process. Originally, did not mandate but people were unwilling to "do the right thing" so decided to make it regulatory.

- Want to protect the river for the future.
- Have to be guidelines and limits to protect from one another.
- A sole home 75' from edge is prohibited, because of fertilizer from lawn, but an ag operation can bring it in by the semi-load.
- Land along Madison is range land and is not fertilized.
- Already observing septic setback, but fertilizing, weed spraying on water edge is allowed.
- There are restrictions on spraying along water edge.
- Public entities are putting in parking lots, trailer sites and no one says anything.
- If it was only one home in 20 years, probably would be okay with no regulation.
- Subdivision regulation can only go so far. Additional waterfront lots can be created through family conveyance and boundary adjustments, as continues to happen.
- Section 7 has done a lot to protect property owners. The introductory paragraph to Section 7 proposed by staff is the protection afforded property owners. Section 7 now tight enough to protect property owners.
- It's taken 30 years to get to this point.
- Taking the emotion out, an honest account of an open process and 3 years of work is summarized in 17 pages.
- There's nothing new in the staff report that hasn't been previously discussed.

Motion to adopt the changes to the resolution as proposed in the staff report. Moved by Don Loyd; seconded by Kathy Looney. Motion passed unanimously.

- A change to the Findings of Fact is needed. The last sentence under subparagraph 2 on page 15 needs elaboration, as suggested by the MACO attorneys.

Motion to change the proposed findings of fact by replacing the last sentence under subparagraph (2) on page 15 to read: "The proposed regulations meet the needs of transportation, sewerage, schools and parks, by ensuring those uses are located where they will not create potential public health and safety hazards. Removing the more intense development activities from immediate proximity to the waterways maintains stream health by allowing the undisturbed streamside buffer to continue to function to filter sewerage (including drainage) from adjacent uses before reaching the waterway, and by removing blockages to stream movement. Transportation should not be affected by these regulations, as limiting development also limits the need to provide facilities in areas that would affect water quality, public health and safety." Moved by Kathy Looney; seconded by Lane Adamson. Motion passed unanimously.

Motion that the Planning Board concurs with the proposed Findings of Fact and the Planning Board report with the Proposed Findings of Fact and the amended regulations be forwarded with the recommendation that the Madison Board of County Commissioners adopt the proposed regulations according to the process described in MCA 76-2-205, which requires that the Madison Board of County Commissioners first advertise and hold a public hearing on the proposed zoning district boundaries and regulations for the zoning district following a 45-day notice period. Moved by Laurie Schmidt; seconded by Richard Meehan.

Discussion on the motion:

- Initially the Board looked at 500', then went back to 300'. It is just an issue with distance, but feel better about 300'. Maybe it could be less. The Commissioners will look at 300' or 75' or some distance in between. This is advisory to the Commissioners.
- Variances could take care of a lot of the issues raised.
- Listened to expert biologist. Science is inconclusive by its nature; numbers subject to change over time. More conservative approach is to protect the river; if we find later that can build closer, then ok.
- Learned as EMT to do no further harm. Science changes; it's in a constant state of flux. It is not an absolute and allows in transition.
- The document is great.
- Streamside steering committee did a great job, as did the Planning Board.
- Compromise was 200' from original Planning Board proposal.
- Variance section was worked on twice.

Call for the question: Aye - 9. Nay - 2. Motion passed by majority.
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Proposed Findings of Fact (76-2-203, MCA) and Sources

The proposed findings of fact required for Part 2 zoning are discussed below. The sources used to support the findings are listed in Attachment D.

- (1) Zoning regulations made in accordance with the growth policy.

The Madison County Growth Policy and Madison Valley Growth Management Action Plan specifically recommend the use of building setbacks to protect rivers and streams, including land not subject to review. The Madison Valley Growth Management Action Plan specifically recommends proposing zoning.

Finding: The proposed regulations are in accordance with the growth policy.

- (2) Zoning regulations must be designed to: (i) secure safety from fire and other dangers; (ii) promote public health, public safety, and general welfare; and (iii) facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

As modified, the stated purpose of the regulations is to protect the riparian resources, floodplain, water quality, and fish and wildlife habitat, maintain property rights and values, and protect the public health and safety. The requirement for a development permit ensures long-term protection from harm caused by inappropriate development. Fish and wildlife resources are an important factor in the County's economic well-being. Fish and wildlife resources, water quality and public health and safety rely on the riparian resources that filter water before it enters streams and the vegetation that prevents bank erosion. The proposed regulations have balanced the need for fish and wildlife habitat protection with the need to allow a defensible space for fire protection purposes. By these regulations, water is protected, and other public requirements, such as continued habitat for fish and wildlife, are met. The proposed regulations meet the needs of transportation, sewerage, schools and parks, by ensuring those uses are located where

they will not create potential public health and safety hazards. Removing the more intense development activities from immediate proximity to the waterways maintains stream health by allowing the undisturbed streamside buffer to continue to function to filter sewerage (including drainage) from adjacent uses before reaching the waterway, and by removing blockages to stream movement. Transportation should not be affected by these regulations, as limiting development also limits the need to provide facilities in areas that would affect water quality, public health and safety.

Finding: The proposed regulations are designed to secure safety from fire and other dangers, promote public health, public safety, and general welfare, and facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

Considerations to be made by the Commissioners

(3) Reasonable provision of light and air.

The combination of a streamside buffer area, transition area and building setback ensure continued access to light and air for the river users, riparian areas, and buildings.

Finding: There is reasonable provision of light and air.

(4) Effect on motorized and nonmotorized transportation systems.

Motorized and nonmotorized transportation systems are not directly affected. Uses currently allowed on the river and waterways would continue to be allowed.

Finding: Motorized and nonmotorized transportation systems are not affected.

(5) Compatible urban growth in the vicinity of cities and towns that at a minimum must include the areas around the municipalities

Urban growth in the vicinity of cities and towns will not be prohibited. The Town of Ennis is has mapped its floodplains and adopted subdivision and zoning regulations that restrict development near waterways. The Ennis subdivision regulations currently require the same construction setback as that required by Madison County. A town commissioner and planning board member participated on the Streamside Protection Steering Committee. If county property is annexed into the Town, the Town regulations would apply.

Finding: Urban growth compatibility in the vicinity of Ennis is acceptable.

(6) The character of the district and its peculiar suitability for particular uses.

The specific characteristics of waterways in the Madison River watershed were considered when establishing the standards.

Finding: The character of the district and its peculiar suitability for particular uses is addressed.

(7) Conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

The value of buildings is conserved through the exceptions section, which allows continued use, maintenance, and expansion. The uses are limited by location, based on the values and resources protected.

Finding: The value of buildings is conserved and the most appropriate use of land is encouraged throughout the jurisdictional area.

(8) Compatibility with zoning ordinances of nearby municipalities

The Town of Ennis zoning addresses development near the Madison River and Moores Creek. The distances are different but not incompatible, partly because of the larger lot size required for property without a community water or sewer system and partly because of existing development in the town.

Finding: Compatible with zoning ordinance in Ennis.

Adoption Procedure

Following is a brief description of the adoption procedure by the Madison Board of County Commissioners outlined in Section 76-2-205, MCA.

1. Pre-public hearing (Commissioners)
 - a. Posted notice - 45 days in advance –in at least 5 public places within the proposed district.
 - b. Publish notice- two consecutive weeks in the newspaper.
 - c. Proposed zoning regulations on file at office of the county clerk and recorder
2. Hold Public hearing
3. Review Planning Board proposal and make revisions/amendments
4. Pass a resolution of intention (ROI) to create a zoning district and to adopt zoning regulations
5. Publish notice of passage of ROI for 2 consecutive weeks
6. Written protest period of 30 days after first publication
7. Within 30 days of expiration of protest period, may adopt creation of the zoning district

Staff Recommendation

Subject to comments received during the public hearing and discussion by the Planning Board, staff recommends that:

1. The Madison County Planning Board make the following changes to the September 27, 2010 Streamside Protection Standards and Permitting Process:
 - A. **Title** (and throughout the document) – remove the reference to the West Fork of the Madison River as a watershed separate from the Madison River watershed.
 - B. **Section 1. Purpose:** Include “provide for the public health and safety of the residents of Madison County” in the purpose statement.
 - C. **Section 5. General Standards**
 - “Section B. Building Setback”
 - Renumber and rename “Section D. Building Setback and Transition Area”

- Modify the paragraph to read: “The building setback is the minimum distance from the stream to a building. The area between the streamside buffer area and the building setback is known as the transition area. Non-building uses in the transition area are permitted. The building setback distances are...”
- Renumber Sections D and E to E and F.
- Include the definition of “Transition Area, the area between the streamside buffer area and the building setback where non-building uses are permitted” to the Section 3. Definitions.
- Modify Figure 1 – General Standards to show the fixed streamside buffer area, secondary streamside buffer area and transition area, as shown in Attachment E.
- D. Section 7. Exceptions and Special Conditions and Rights of Property Owners**
 - Add: “Exceptions and special conditions have been identified to ensure that legally created lots would remain buildable under these regulations. Where adjustments in distances are needed to ensure there is a buildable area that minimizes overall disturbance, the adjustments are to be considered in this order: building setback, transition area, secondary streamside buffer area, then fixed streamside buffer area.”
 - Section 7.A. Exceptions: “Streamside buffer areas, transition areas and building setbacks pertain to all building construction...”
 - Section 7.B.: “...Where the right of property owner to build a structure on a pre-existing lot necessitates a decrease in the streamside buffer area, transition area or building setback ...”
 - Section 7.B.1. Decreases in Streamside Buffer Areas and/or Setbacks
 - Section 7.B.1.a., 1.b., 1.c., 1.d. – replace “streamside buffer area” to “streamside buffer area, and/or building setback” throughout.

2. The Madison County Planning Board concur with the proposed findings of fact, and
3. The Planning Board report with Proposed Findings of Fact and the amended regulations be forwarded with the recommendation that the Madison Board of County Commissioners adopt the proposed regulations according to the process described MCA 76-2-205, which requires that the Madison Board of County Commissioners first advertise and hold a public hearing on the proposed zoning district boundaries and regulations for the zoning district following a 45-day notice period.

Planning Board Recommendation

The Planning Board recommends, and staff concurs, that the Planning Board Report with Proposed Findings of Fact and the amended regulations be forwarded with the recommendation that the Madison Board of County Commissioners adopt the proposed regulations according to the process described MCA 76-2-205, which requires that the Madison Board of County Commissioners first advertise and hold a public hearing on the proposed zoning district boundaries and regulations for the zoning district following a 45-day notice period.

Submitted on behalf of the Madison County Planning Board,

Charity Fechter, Planning Director

List of Attachments

Attachment A – Timeline

**Attachment B – Streamside Protection Steering Committee
Recommendations Transmittal Letter**

Attachment C – Shared Community Values

Attachment D – Sources

Attachment E – Modified Figure 1

Attachment A – Timeline

1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991
◆	◆						◆				◆					◆			
Madison County Planning Board Formed	Madison County Comprehensive Plan						Madison River Committee				Madison River Corridor Plan					Madison County Comprehensive Plan Update			
	Recommendation C(2). Protect land unsuitable for development by virtue of being in a flood plain, on excessive slopes, in poor soils, or otherwise unsuitable which may be hazardous to the health or welfare of the homeowner, or which may be environmentally damaging.						Identifies the importance of “preserving scenic values and maintaining high quality recreational opportunities on the Madison River corridor for present and future generations”				Commissioned by Planning Board - Study noted that there was concern in the early 70’s that subdivision and land development along the Madison was adversely affecting important recreational values and related economic values of the resource.					Objective E.3. Encourage measures which will preserve air and water quality and protect watersheds from erosion and loss of ground cover.			
											Documented the public’s “concern that development along the Madison River will adversely affect the important economic and recreational opportunities that so many people depend on in the Valley.”					Objective E.5. Work toward implementation of the Madison River Corridor Plan to achieve a greenbelt or buffer strip along the upper Madison River and develop corridor plans for the Ruby, Big Hole, Beaverhead and Jefferson Rivers.			
											Identified “immediate action is needed to protect the Madison River Corridor with special emphasis on a strip 500 feet each side of the river” from Quake Lake to Varney Bridge.					Objective E.6. Preserve and protect the abundant fish and wildlife resources of the County			
											Objective #5 of the Plan was to achieve a greenbelt or buffer strip along the upper Madison River and to develop corridor plans for the Big Hole, Beaverhead and Jefferson Rivers.					Objective F.6. Consider the visual aesthetics of the Madison, Big Hole, Beaverhead, Ruby, and Jefferson River Corridors in evaluating proposed land uses within these corridors.			
											Plan Objective #6 is to consider the visual aesthetics of the Madison, Big Hole, Beaverhead, Ruby and Jefferson River corridors in evaluating proposed land uses within these corridors.					Includes Madison Valley Plan. Incorporated recommendations from Madison River Corridor Plan. Relied on voluntary approach.			
											Planning Board begins working with landowners to preserve 500’ corridor on each side of the Madison River “except in rare cases where building could not be seen from the river due to natural topography.” The board recognizes that unfortunately, some building has occurred over the past decade within the 500 foot setback along the Madison River where the board had no regulatory review authority.								

1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
	Subdivision Regulations		Subdivision Regulations				Comprehensive Plan	Subdivision Regulations					
	Adopt construction setbacks of 150' for Big Hole and Jefferson Rivers, 500' for Madison River. Difference in setbacks based on the different characteristics of the rivers.		Adopt construction setbacks of 150' for Ruby, Beaverhead and South Boulder Rivers.				Guiding Principle #2 – Protect our river corridors.	Defined purpose as: Protect the water quality, floodplain, and riparian resource of the rivers and other water bodies in Madison County; Protect the visual resource enjoyed from these waterways; and Provide for the health and safety of the residents of Madison County.					
							Land Use Objective #3 – Keep development out of the floodplain and riparian areas.	Added construction setbacks of 100' from other waterways.					
							Land Use Objective #6 – Locate and design development in ways that preserve open space.						
							Economy Objective #2 – Utilize and protect the resources which support these major economic sectors (agriculture, forestry, mining, recreation and tourism, retirement-related services, entrepreneurial enterprises, and construction activity.)						
							Economy Objective #4 – Acknowledge the economic value of the County's fisheries, wildlife, and wildlife habitat.						
							Environment Goal – Protect the quality of our air, groundwater, surface waters, soils, vegetation, fish and wildlife habitat, scenic views, cultural and historic resources.						
							Reiterated goal from 1988 Madison Comprehensive Plan Update: Preserve and protect the entire Madison River corridor, from Quake Lake north to the County line, from encroachment by development. Specifically, the following values should be protected: scenic, fish and wildlife, recreation, agricultural, historic and archeologic, and floodplain sites.						

2006	2007	2008	2009	2010
Madison County Growth Policy Revised the 1999 Comprehensive Plan to meet state Growth Policy standards Keep the Plan current in goals and recommended actions Retained goals and objectives from 1999 Plan	Madison Valley Growth Management Action Plan Followed two-year long, collaborative public process to explore options and identify actions to positively manage growth in the Madison Valley. Specific Action Item: “use of building setbacks to protect rivers and streams” including “land not subject to subdivision review.”	Streamside Protection Steering Committee Held 21 public meetings from January, 2008 to September, 2009 Presented consensus ordinance to the Planning Board in October 2009		
	Madison Valley Growth Solutions Community Forums/Boxholder Mailings <div> <div> July 7, Public Forum #13 (Water Summit) – water rights, water allocations, wetlands, surface and groundwater resources </div> <div> January 30, Public Forum #15 (Streamside Protection for All) – Ways to accomplish streamside protection, presentation of discussion draft ordinance </div> </div> <div> September 27, Public Forum #14 (Water & Growth) and Boxholder Mailing of July 7 summary - Participants’ priority recommendation was to expand Madison County setback requirements to include all new development in the Madison Valley. </div> <div> Request to County Commission – to adopt ordinance expanding setback requirements to apply to all development, not just subdivisions </div>	<div> April 23, Public Forum #16 (Science of Setbacks) </div> <div> September 17, Public Forum #17 (Governor’s Riparian Task Force, Conservation District, Forest Service, Gallatin County Water Quality District) </div>	Planning Board - Review Steering Committee proposal (November 2009 to present) Reviewed and suggested changes to Streamside Protection Steering Committee draft	April 26 – recommended that the Part 2 zoning process be used to adopt streamside protection regulations June 7, 2010 – Scheduled – joint meeting with Commissioners to present proposals and receive input

Attachment B – Streamside Protection Steering Committee Recommendations Transmittal Letter

To: Madison County Planning Board

From: Madison Streamside Protection Committee: Pat Clancey, John East, Kelly Galloup, Donna Jones, Chris Murphy, Jeff Laszlo, Richard Lessner, Gayle Schabarker, Amy Robinson

Date: September 24, 2009

RE: Streamside Protection Ordinance and Recommendations

cc: Madison County Commissioners

This committee, made up of stakeholders from every major perspective, has held 21 public meetings since January of 2008, in order to develop a draft Streamside Protection Ordinance for the Madison River, Jefferson River, and their tributaries in Madison County. The draft ordinance has been attached for consideration.

This committee and an intensely interested general public struggled to balance protection of the river resources and protection of private property interests. Everyone on this committee thinks that water quality, riparian habitat protection and private property rights are important. The most difficult part of the discussion centered on how to balance those interests in the ordinance language. Many conflicting issues were discussed, and we all tried very hard to proceed as charged by the county, many hours of concern and energy were spent trying to find common ground where no easy answers exist.

We were not able to agree to an exact minimum setback number and have outlined the range in our discussion of Section 5, in the addendum. We do think that the setback ought to have three key features:

- 1) A natural vegetative buffer between the rivers and streams and structures;
- 2) A minimum setback that will minimize resource damage on the majority of properties; and
- 3) A secondary setback that will protect especially sensitive sites.

In addition, we would like to highlight key points of consensus:

- Water quality and riparian protection are our primary resource protection goals. Floodplains appear to be adequately covered in separate floodplain regulations. Viewshed issues, though important to some, do not have a consistent enough definition or sufficient support to become part of an ordinance.
- Straightforward and transparent processes for permitting, review, variances and appeals are very important. We discussed each process section in great detail. The language in the draft ordinance reflects our best attempts to ensure that the process is clear and streamlined for the landowner, but is also thorough enough to ensure that the Planning Department can adequately assess the request and resource protection will take place.

- The planning area, as stated in Section 4 and in Exhibit A and B is appropriate to the goals of water quality and riparian habitat protection.
- In order to meet our resource protection goals, the buffer area within the setbacks needs to be left in its natural state. This ordinance contains language that makes this intent clear. Education will be an important and ongoing tool to ensure that people understand the importance of the natural buffer area and how to properly care for and maintain their property. Though education is not an ordinance, we think it is an essential component of any reasonable resource protection strategy.

This process has been long and complex. We have heard from and represent every major stakeholder perspective in the planning area. We believe we are sending you the best balance between resource protection and private property protection that we can achieve.

Sincerely,

Madison County Streamside Protection Committee



Pat Clancey



John East



Kelly Galloup



Donna Jones



Chris Murphy



Jeff Laszlo



Richard Lessner



Gayle Schabarker



Amy Robinson

Signed September 24, 2009

Addendum

Notes on each section are listed below, to help guide the Planning Board in its deliberations:

Section 1. Purpose

This states the balance the committee has tried to maintain.

Section 2. Authority

This was not formally reviewed because none of the committee members are lawyers with expertise in this area, but we urge the Commissioners to have this carefully and thoroughly reviewed before passage.

Section 3. Definitions

Definitions were all discussed and relate directly to language in this ordinance.

Section 4. Jurisdictional Area and Compliance

We agree that this excludes the South Boulder River, as is stated in the purpose and shown on the map in Exhibit A and B. As a committee, we feel that this ordinance is clearer if the same points are not repeated again and again.

The jurisdictional distance is a trigger for county review.

Section 5. General Standards

B. Fixed Width: We have not reached full consensus on the minimum setback. Our range of minimum setback feet is:

Madison: 50'-100'; **average= 75'; median= 75'**

Jefferson: 50'-100'; **average= 84.4'; median = 87.5' [one member abstained]**

Tributaries: 25'-100'; **average= 58.3'; median = 50'**

As explained above, our numbers vary because we have not all come to the same conclusion about how to weigh the balance between private property rights and natural resources protection.

A natural vegetative buffer is essential for the resource protection and we all affirm that this needs to be in place.

C. Variable width secondary setback zone:

We think that this secondary setback is a reasonable way to try to accommodate private property rights, while allowing for additional natural resource protection where it is warranted. The proposed approach in Exhibit C has been discussed in detail and provides a relatively streamlined approach to identifying and implementing this portion of the ordinance. In most instances, we do not anticipate the need for a variable setback.

Section 6. Permitting Process

We're trying to keep this as streamlined as possible, while also ensuring that the Planning Department has enough time to review permits.

Section 7. Exceptions and Special Conditions

We've discussed these factors in great detail and believe we have identified all the major exceptions and special conditions that exist.

Section 8. Variances and Appeals

We attempted to make this as streamlined as possible. We expect that this will not need to be used for most cases.

We have two possible compositions of the review committee. We recognize that a review committee will not be needed frequently, so we tried to balance experience with the need for a broad-based review that could adequately balance property rights and resource protection.

- 1) Two Planning Board members and three citizens at large, all from within the planning area affected by this ordinance; or
- 2) Five person citizen at large panel within the planning area affected by this ordinance.

In either case, balance of stakeholder perspectives would be desirable.

Section 9. Enforcement

We discussed this in detail to come up with a workable system for identifying and following up on violations.

Section 10. Penalties

The most important penalty is to ensure that violators are forced to fix the problems they make.

Section 11. Severability

Did not review this legal language, but assume that this will work the same as it does in the subdivision ordinance and other existing ordinances.

Exhibit A. Planning Area Map

Thicken boundary to designate planning area. Outline boundary only; do not show watershed boundaries.

Madison County

Shared Community Values

- ✓ Open Space
- ✓ Wildlife
- ✓ Small Town Attributes
- ✓ Natural Beauty
- ✓ Ranching
- ✓ Viewshed
- ✓ Outdoor Recreation and Public Land Access
- ✓ Healthy Economy, including good jobs and housing opportunities
- ✓ Quality low-impact development

Attachment D –Sources

1. Brock, Brent. 5/4/10. E-mail on wildlife corridor.
2. Citizens for a Better Flathead, 9/07. *Streamside Setbacks Increase Property Values and Attract Economic Development*. Research compiled and submitted for the record in support of the Whitefish Critical Areas Ordinance.
3. Ellis, J.H. 2008. *The Need for Stream Vegetative Buffers: What Does the Science Say?*, three reports to the Montana Department of Environmental Quality, EPA/DEQ Wetland Development Grant. Montana Audubon, Helena, MT.
 - a. *Part I: Scientific Recommendations on the Size of Stream Vegetative Buffers Needed to Protect Water Quality*.
 - b. *Part II: Scientific Recommendations on the Size of Stream Vegetative Buffers Needed to Protect Fish and Aquatic Habitat*
 - c. *Part III: Scientific Recommendations on the Size of Stream Vegetative Buffers Needed to Protect Wildlife and Wildlife Habitat*
4. Ellis, Janet H. 2008. *Streamside Setbacks: Protecting People, Property, and Montana's Streams and Rivers, with Specific Information on Ravalli County, Montana*. Handout developed as part of an EPA/DEQ Wetland Development Grant. Montana Audubon, Helena, Montana, January 23, 2008. 8 pp.
5. Governor's Task Force for Riparian Protection, *Room to Roam* (brochure, PowerPoint presentation, website), <http://water.montana.edu/riparian/>
6. Joint Planning Board/County Commission Community Forum Comment Summary. June 28, 2010.
7. Madison County Comprehensive Plan Update, 1988.
8. Madison County Comprehensive Plan, 1973.
9. Madison County Growth Policy, Adopted September 22, 2006.
10. Madison County Ordinance 1-2004. *Big Hole River Conservation Development Standards and Permitting Process*. 2004.
11. Madison County Subdivision Regulations, 1993.
12. Madison County Subdivision Regulations, 1995.
13. Madison County Subdivision Regulations, 2000.
14. Madison County Subdivision Regulations, 2006.
15. Madison River Corridor Study, 1983.
16. Madison Valley Growth Action Plan, Adopted May 30, 2007.
17. Madison Valley Growth Solutions, 2007, 2008. (Information and participant responses from community forums)
18. Montana State University, Animal & Range Sciences Extension Service, *Stream and Riparian Area Management tutorial*, <http://www.animalrangeextension.montana.edu/riparianmgt/index.htm>.
19. Oregon State University, Extension Service, Special Report 1077, June 2007. *How Have Land-use Regulations Affected Property Values in Oregon?*
20. Saul, Lynda and Ray, Robert, Montana Department of Environmental Quality. 8/18/10. E-mail clarifying use of Ellis work.
21. Shults, Myra. Letter to Madison County Commissioners regarding zoning
22. Streamside Protection Steering Committee meeting summaries, 2008-2009.
23. Streamside Protection Steering Committee Transmittal Memo, with addendum. September 24, 2009.

24. Weddle, Richard M. *Montana Planning and Zoning Law Digest, 2nd Edition. A Comprehensive Summary of Judicial Decisions and Attorneys General Opinions Relating to the Law of Planning and Zoning in Montana.* Document prepared by Montana Department of Commerce. Pp. 32-33, excerpts on Variance Criteria.
25. Voluminous public comment submitted between December 2008 and October 25, 2010. Comment includes letters, faxes, e-mails, statements/submittals made at public meetings, meeting summaries, published opinions.
26. 76-2 MCA, Planning and Zoning.
 - a. Part 1 County Planning and Zoning Commission
 - b. Part 2 County Zoning
 - c. Part 9 Agricultural Activities
27. Montana Constitution, especially:
 - a. Article II, Declaration of Rights
 - i. Section 3. Inalienable rights. All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities.
 - b. Article IX, Environment and Natural Resources
 - i. Section 1. Protection and improvement. (1) The state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations.
(2) The legislature shall provide for the administration and enforcement of this duty. (3) The legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

Attachment E – Modified Figure 1

